

1 Honorable Robert S. Lasnik
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

9 NANCY L. JAMES, Chapter 7 Trustee

10 NO. 2:15-cv-01914 RSL

11 v.

Plaintiff(s),

12 JAMES C. PATON, et al.,

13 Defendant(s).

14 DECLARATION OF MARY C. EKLUND
15 IN SUPPORT OF CLARK NUBER'S
16 SURREPLY TO PLAINTIFF'S REPLY TO
17 CLARK NUBER'S OPPOSITION TO
18 PLAINTIFF'S MOTION TO COMPEL
19 DISCOVERY FROM CLARK NUBER &
20 THE PATON DEFENDANTS

21 NOTED ON MOTION CALENDAR:
22 August 5, 2016

23 Mary C. Eklund, under penalty of perjury under the laws of the State of Washington,
24 hereby declares and states as follows:

25 1. I am over the age of 21, am one of the attorneys of record for defendant Clark
Nuber, P.S. ("Clark Nuber") and as such am qualified to make this declaration.

2. Attached as Exhibit A are true and correct copies of emails from Clark Nuber's
counsel to plaintiff's counsel on April 6 and 7, 2016,¹ specifically, Exhibit A-1 (email from William
Fitzharris to Manish Borde, dated April 6, 2016), Exhibit A-2 (email from Manish Borde to
William Fitzharris, dated April 6, 2016) and Exhibit A-3 (email from William Fitzharris to Manish

¹ For security reasons, the specific user access information has been redacted from the exhibit copies but it was fully visible to plaintiff's counsel and expert witnesses in the original emails.

1 Borde, dated April 7, 2016). Plaintiff's claim is false that the April 6, 2016 email offering remote
 2 access to the electronic workpapers "would only be available for a week." Dkt #232 at 2. There
 3 is no time period for access or availability stated in any of the emails from Clark Nuber's
 4 counsel.

5 3. Attached as Exhibit B are true and correct copies of additional transcript pages
 6 from the deposition of Victoria Kitts, taken on June 28, 2016, reflecting just one of several
 7 conversations between plaintiff's counsel and defense counsel during the deposition of this and
 8 other Clark Nuber witnesses in which defense counsel repeatedly identified the "availability" and
 9 location of Clark Nuber's audit workpapers, including electronic copies, if plaintiff's counsel
 10 wished to print them for use in the depositions. Plaintiff's claim is false that "these materials"
 11 were not "offered to solve the problems witnesses" were having trying to answer questions by
 12 plaintiff's counsel. Also, Ms. Kitts was deposed by plaintiff's counsel alone for over 7 hours on
 13 June 28 2016, and she was deposed again by the Paton defense counsel on July 12, 2016, for
 14 another 5 hours or so, at the end of which plaintiff's counsel declined to ask further questions.

15 4. Attached as Exhibit C-1 is a true and correct copy of the Amended Notice for
 16 30(b)(6) Deposition of Clark Nuber, P.S., served July 20, 2016. Attached as Exhibit C-2 is a
 17 true and correct copy of the entire transcript of the second Rule 30(b)(6) deposition of Clark
 18 Nuber shareholder, Matt Medlin, taken at the unilateral demand of plaintiff's counsel on July 21,
 19 2016, in Salt Lake City, Utah, while Mr. Medlin was on a business trip.² In that deposition, Mr.
 20 Medlin was asked and did identify by Bates numbers each and every audit workpaper in the
 21 Clark Nuber electronic files, which files had first been produced in hard copy with Bates
 22 numbers on all pages to plaintiff's counsel in March 2015 and which plaintiff's counsel was free
 23

24 2 Mr. Medlin had already appeared for a full 7 hour day for his first Rule 30(b)(6) deposition by plaintiff on
 25 June 1, 2016. Mr. Medlin was then forced to stop his own business commitments on July 21, *while out of town*, because plaintiff refused to schedule Mr. Medlin's second deposition at a mutually convenient time for the witness or his counsel, despite repeated requests by defense counsel.

1 to print again, directly from the Clark Nuber electronic files, at any time from April 7 through
2 June 30, 2016 – the *3 month period* in which they and their expert witnesses were given free
3 24/7 access to those electronic workpapers. See Dkt #224 (Henley Declaration, dated August
4 1, 2016, ¶ 4). Plaintiff again seriously misleads this Court in claiming there is “no means of
5 identifying” the audit workpapers to print for the Lee or any other Clark Nuber deposition or even
6 what are “the essential and relevant workpapers for reference [for their] deposition questions”
7 since each audit workpaper has a title on it, (as described by Mr. Medlin in his deposition – see
8 Exhibit C-2) and, if plaintiff’s counsel are unable to understand the plain English titles used, they
9 could certainly have asked one of their several CPA expert witnesses at the Brueggeman
10 Johnson accounting firm, to assist them. Exhibits A-2 and A-3 to this declaration show this
11 public accounting firm as well as plaintiff’s counsel were given free access to the Clark Nuber
12 electronic records on April 7, 2016, and, as such, either firm could have printed free of charge
13 every single page of those electronic records on a daily basis, 24/7, over the next three months.
14 See Dkt #224 (Henley Dec, ¶ 4).

15
16 DATED this 5th day of August, 2016.

17 PREG O'DONNELL & GILLETT PLLC
18
19 By /s/ Mary C. Eklund
20 Mary C. Eklund, WSBA #12416
21 Attorneys for Defendant Clark Nuber, P.S.
22 901 Fifth Avenue, Suite 3400
23 Seattle, Washington 98164
24 meklund@pregodonnell.com
25

DECLARATION OF SERVICE

I hereby declare that on this day I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the attorneys of record listed below:

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DATED at Seattle, Washington, this 5th day of August, 2016.

/s/ Lisa Jager
Lisa Jager, Legal Assistant

DECLARATION OF MARY C. EKLUND IN SUPPORT
OF CLARK NUBER'S SURREPLY - 4
10425-0064 Dec of Eklund iso CN Surreply
Case No. 15-1914 RSL

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